

Introduction

Real estate advertising is a powerful marketing tool which can convey messages and shape opinions. Consumer protection laws dealing with real estate advertising require that advertising be factual and bias free.

Advertising must comply with standards which have been set over time through court decisions and by the laws and rules of the local, state, and federal governments. Violation of these laws could result in a loss of a professional license and also subject the violator to civil damages. Nearly half of all real estate cases handled by the Regulated Industries Complaints Office (RICO) involve advertising violations.

This is a real estate guidebook to advertising in Hawaii. A guidebook is defined by Webster's New World Dictionary as a "book giving instructions in the elements of some subject." The focus is to provide the reader with general guidance in preparing real estate advertisements. Described are the applicable state and federal laws and rules.

These laws and rules are described in plain language. To gain information of the specific wording of a law or rule, you should check the citation provided wherever applicable. Also, nonbinding and informal interpretation is available through the Real Estate Commission's staff specialists in their respective areas.

However, when a legal opinion as to whether a specific advertisement complies with the existing laws and rules is required, a licensed attorney is the only one who can provide a valid legal opinion.

The following material introduces and reviews some of the major considerations which need to be kept in mind in promoting real estate activities through advertising in Hawaii. Although presently there is much discussion and some movement to change some aspects of the state administrative rules on real estate advertising, this guide is based on the current laws and rules and their appropriate interpretations.

Advertising

What constitutes advertising?

Advertising is the *use* of any medium of promotional materials and activities. The *Advertising Compliance Handbook* (2nd edition from the Practising Law Institute) includes media sources used in advertisement placement, business materials such as letterheads, stationery, invoices, postcards, price lists, display cards, circulars, packages, trade names, and sales talks. In a phrase, it encompasses all forms of visual, auditory, and word usage in the material.

In real estate advertising it would include business cards, stationery, letterheads, signage, brochures and property information sheets, media announcements including press releases, FAX's, classified ads, oral presentations, billboards, direct mail, multiple listing service, newspaper, magazine, radio, video, television advertising; as well as any other technological devices such as computer networks.

What constitutes false advertising?

Courts have generally formulated in past case rulings that false advertising consists of *a false statement of facts made by the advertiser*.

False is defined as being not true, incorrect, or of mistaken content.

False advertising occurs when a false set of facts actually deceives (or has a tendency to deceive) the intended audience and is material in influencing their decision-making process.

Is “puffing” false advertising?

Puffing is described as an exaggeration, elaboration, or “salesperson talk” which consists of a literary or rhetorical use of language where opinions and claims are not subject to verification.

For example, the property was advertised as being blessed with the best ocean view in Hawaii. Generally, this type of statement is not likely to mislead consumers since most consumers are not likely to rely on such opinions. However, the line between puffing and false advertising may be crossed when the average consumer would not recognize the claim as puffing and would rely on the advertiser's claim.

Because “puffing” may be misunderstood by some consumers, it is recommended that this type of salesperson talk not be used in your advertising. This is particularly true with respect to consumers whose primary language is not standard American English.

Who is responsible for discriminatory advertising?

There are federal and state laws which individually and/or collectively prohibit discriminatory advertising. Coverage is extended to specific “protected” classes and are comprehensive in terms of all types of advertising content and promotional material. *Brokers, salespersons, real estate schools, lenders, advertising agencies, and media groups are all responsible and potentially liable for violations.*

Brokerage Advertising

Hawaii has enacted legislation similar to the Federal Trade Commission Act which allows a private right of action against false advertising and deceptive conduct. This includes a private right of action for consumers to pursue the recovery of actual damages. In this section, a real estate licensee should note that particular activities connected to violations of advertising requirements may lead to not only the loss of the use of a professional license, but civil damages as well.

Hawaii Revised Statutes (HRS) Chapter 476... (Credit Sales) Section 2... states, “no contract, memorandum, or advertisement shall be required by this chapter to contain any disclosure which is inconsistent with the requirements of the federal Truth in Lending Act.” In reviewing this section, consider the provisions discussed in the federal section as applicable to state law.

State action and federal law preemption ...the 1990 United States Supreme Court case of *English v. General Electric Company* established the basis for preemption of a state law by a federal statute. The preemption occurs where:

- Congress clearly states that the state law is preempted;
- Congress clearly states the intention to exclude from regulation the state law; and
- there is no indication of intent given, yet a state law conflicts with the federal law.

Licensing sanctions

The following laws and rules provide for possible sanctions to a real estate licensee when real estate advertising regulations are violated.

HRS Chapter 436B (Uniform Professional and Vocational Licensing Law), Section 19, indicates that licensees in this **state** may have their license to practice a profession, such as real estate, *revoked, suspended, denied or conditioned in some*

manner, by “...engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements....”

HRS Chapter 467 (Real Estate Brokers and Salespersons), Section 14, states the **Real Estate Commission** may **revoke** a real estate license or **suspend** the right of the licensee to use the license for “...pursuing a continued, and flagrant course of misrepresentation, or making false promises through advertising or otherwise....”

Hawaii Administrative Rules (HAR) Title 16, Chapter 99 (Real Estate Brokers and Salespersons), states the **Real Estate Commission** may revoke or suspend a real estate license for violations. Section 3 (Conduct) provides guidelines for compliance.

Two specific provisions of the conduct section are material to this subject:

1. the broker shall not submit or advertise property without written authorization, or franchise, and
2. in any offering, the price quoted shall not be other than that agreed upon with the owner as the offering price.

A licensee shall not place any sign or advertisement indicating a property is for sale, rent, lease, or exchange without the **written authorization** of the owner or seller and **approval** of the principal broker or broker-in-charge.

Mandated advertisement information requirements

HAR Title 16, Chapter 99, Section 11 (Advertisements), describes the rules under which real estate firms and licensees must comply in **ALL** forms of advertisements and promotional material.

USE OF FULL NAME: Real property advertisements must be advertised in the full name of the broker as licensed by the Commission. Include any trade name previously registered with both the Department of Commerce and Consumer Affairs’s (DCCA) Business Registration Division and the Commission.

On your license application for an individual license, you were required to provide your legal name (first name, middle initial, last name). This is the full name which also appears on your individual wall certificate and your pocket identification card. This is the full name that must be used in your advertisements. The Commission has issued an informal interpretation regarding a license name for application which may be summarized as follows:

1. The full surname must always be used.
2. A first name or first initial must always be used.
3. A middle name or middle initial is not required if the full first name is used.
4. A first initial may be used instead of a full first name if a middle name or middle initial is used.
5. Shortened versions of names are not acceptable (e.g., Jon instead of Jonathan).

According to a nonbinding informal interpretation of Commission rules involving a single advertisement (e.g., individual's brochure or marketing package), a licensee's full name as licensed by the Commission shall be clearly and prominently displayed ***at least once*** in all advertising and promotional materials.

The following examples will demonstrate acceptable and unacceptable application license names for applicant Jonathan Quincy Penguin:

Acceptable	Not Acceptable
Jonathan Quincy Penguin	Jon Penguin
Jonathan Q. Penguin	Quincy Penguin
J. Quincy Penguin	Q. Penguin
Jonathan Penguin	J. Penguin

Licensees who wish to ***change their license names***, within the parameters identified above, may do so by submitting ***a change form to the Professional & Vocational Licensing Division, DCCA***.

Disclosure of an individual's status as a real estate licensee, whether ***active or inactive, is required*** in all advertisements and promotional material. If the licensee is inactive, it must be disclosed. A licensee must indicate whether they are a broker (B), salesperson (S), Realtor® (R), or Realtor® Associate (RA), as applicable, after the individual's name. Only persons who belong to the National, State and local Board of Realtors® may use the (R) or (RA) symbols.

Advertiser note

If the need arises for an advertiser to determine whether a licensee is active or inactive, this information is available from the Professional & Vocational Licensing Division of the Department of Commerce and Consumer Affairs.

SCENARIO ONE

The broker's name as licensed by the Commission is J. Quincy Penguin. He is well known in business circles and to his family as Jay Q. He works for XYZ REALTY at 123 Aloha Way in Hui, Hawaii, as a broker salesperson and is a member of the local and state Board of Realtors®.

When using his name in an advertisement it must read:

J. Quincy Penguin (R)

XYZ REALTY (B)

If he desires to use his nickname or other less formal equivalents in an advertisement it must appear with quotation marks and also include his full name.

J. Quincy "Jay Q" Penguin (R)

XYZ REALTY (B)

NOTE: **Full name** means your name as licensed by the Commission. When a salesperson's name is used and identified in an advertisement, the licensed broker (XYZ Realty in the example above) must also appear and be identified as the broker.

SCENARIO TWO

Examples of Full Licensed Name: NNN Realty, Inc.

Rich Corp. dba RC Realty

For advertising purposes only, the Commission will allow the omission of Inc., Corp., and Ltd. if the balance of the full licensed name remains.

Advertised Example: NNN Realty (B)

Rich dba RC Realty (B)

The legal implications of advertising in this manner should be checked with the brokerage firm's attorney.

Property owned by a licensee

The use of full name rules still apply to property owned by a licensee, whether the license status is active or inactive. Both active and inactive licensees are *prohibited* from using any of the following:

- For sale by owner
- For rent by owner
- For lease by owner
- For exchange by owner

Leasehold or fee simple property

Each property advertised or promoted must indicate whether the property is leasehold or fee simple. The designation (L) for leasehold and (FS) for fee simple is acceptable. An informal nonbinding interpretation by the Commission indicates that additional information, such as “fee available”, may be made after the proper property designation. Thus, (L) Fee available.

Individuals and real estate firms

Each licensee in any form of advertising must identify their brokerage firm or employing broker (B) and specify whether he/she is a broker (B), or a salesperson (S). This can also be accomplished individually by using the term Realtor® (R), for a broker, or Realtor® Associate (RA), for a salesperson, *if* currently a member of the National, State and local Association of Realtors®.

Advertising by out-of-state real estate brokerage

A brokerage not licensed in Hawaii may not advertise in Hawaii, regardless of whether the property is located in Hawaii or out-of-state for sale, rent, lease, exchange or option to purchase.

Address and telephone numbers

When the address and/or telephone numbers appear in an advertisement or promotional material and differ from the address and telephone number of the registered place of business, each must be *identified and designated*.

SCENARIO THREE

J. Quincy Penguin's designated business address of XYZ Realty was at 123 Aloha Way as registered with the DCCA and Commission.

If he desires to place his home telephone number on his business card, it must be identified.

<p>XYZ Realty (B) 123 Aloha Way Hui, Hawaii 96700</p> <p>(808) 654-3210 (Business) (808) 654-1234 (Home)</p> <p>J. Quincy "Jay Q" Penguin (R)</p>

Note: *If a home address is included, the name of licensee whose home it is must also appear.*

Licensees may use cellular phone numbers or fax numbers in advertisements, as long as it is disclosed as such (e.g., Cell or Fax) and meets all other advertising laws and rules.

Franchises

When advertising a franchise registered with the DCCA and the Commission, the height of the broker's name (all rules of use of full name indicated previously apply) ***must not be less than 20 percent*** of the height of the franchise name and logo. Each advertisement must include the franchise name as registered.

If the franchise is independently owned and operated, ***each advertisement must so indicate. The exception is "for sale" signs on the respective property for sale or "spot" classified advertisements (three column inches or less).***

Advertisement samples

All of the examples on pages 6, 7 and 8 are used as sample advertisements and are fictitious names and places.

Sample Acceptable Rental Advertisements	
Houli Beach 3 bdrm, 2 bath, long term rental, \$2,000/month XYZ Realty (B) 123 Aloha Way Hui, Hawaii 96700 Call J. Quincy "Jay Q" Penguin (R) 654-3210 (Bus.) 654-1234 (Home)	Cottage for Rent \$1,000/month Hubert L. Song (B) (licensee)/owner daytime 654-9876 SONG REALTY (B)
Sample Acceptable Sale Advertisements	
Kona Residential Lot, View Site \$280,000 (FS) Curtis S. Jams, Jr. (S)/owner 222 Kailua Road Kona, Hawaii 96752 (home address) (808) 654-1234 (Home) Alice Dull dba AD Realty (B) 1111 Kailua-Kona Drive Kona, Hawaii 96752 (business address) (808) 812-9876 (Business)	Suttersville Project: 2 bedroom condominium, \$196,000 (L) Triple B Brokerage (B) 1212 Bishop Street #324 Honolulu, Hawaii 96816 (808) 954-1212

Laws and Regulations on Discrimination

A. Federal fair housing laws

The United States Department of Housing and Urban Development (HUD) booklet, *The Fair Housing Advertising Guide*, quotes the Federal Fair Housing Act statement on discriminatory advertising as *"to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin."*

There are certain exceptions to the familial status protective class provision permitted in "housing for older persons", such as projects where all inhabitants are 62 or older.

B. State discrimination laws

HRS Chapter 515 (Discrimination in Real Property Transactions) includes all the federal protected classes named in the federal section above plus marital status, age, ancestry, and HIV (human immunodeficiency virus) infection.

Hawaii's discrimination law not only applies to residential property (as with the Federal Fair Housing Act) but to **ALL** types of real estate uses, whether commercial, industrial, agricultural, or unimproved property.

HRS Section 515-3 (Discriminatory Practices) states, “*to print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign,*” directly or indirectly, with “*an intent to make a limitation, specification, or discrimination with respect*” to the “protected classes” is prohibited.

C. Discriminatory content

Phrases and words

Advertising should “avoid words, symbols or adjectives” that suggest a preference for, or create limitations against one of the protected classes. HUD indicates that words like ***private, exclusive, board approved, or restricted*** may suggest or be interpreted as being discriminatory.

Other examples to AVOID include advertised phrases or descriptions such as:

- singles preferred
- Hispanic neighborhood
- St. Joseph's Parish
- ideal for the physically fit
- mature persons
- restricted community

Marketing and models

Consumers identify with models and products in real estate advertising. Regarding human models, HUD indicates that “*...models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children.*”

REMEMBER: All human portrayals need to indicate to the general public that housing is available to all!

Advertising may:

- indicate preference for nonsmoker and/or sober;
- indicate that housing is accessible to persons with disabilities;
- indicate that housing may be restricted to a particular sex (if the living areas are shared in common);
- indicate intended for and operated as housing for older persons; and
- indicate widely used physical terms such as bachelor apartment, family room or master bedroom.

Violations of state and federal laws can occur by selective and discriminatory use of:

- language;
- media type; and
- geographic coverage, which may be exclusive to a site or development and be discriminatory.

Other examples of fair housing violations include:

1. selective advertising using human models that selectively focus on one racial or national origin segment of the population, and
2. writing out directions to a property where well-known ethnic, racial or religious landmark or any other major type of landmark which could signal a preference for a specific type of person.

D. Equal housing requirements

HUD regulations state, “*All advertising for residential real estate for sale, rent, or financing should contain an **equal housing slogan, logo or statement.***” See examples on page 13.

Publisher's Notice

Under HUD regulations, newspapers need to place at the head of the classified real estate section a “publisher’s notice” which indicates that all housing advertised in the newspaper is covered by provisions of the fair housing laws. A **telephone number** in the notice must be provided so people may call in the event they suspect any incidents of housing discrimination.

The notice may also include a statement regarding the coverage of any local fair housing or human rights ordinances which prohibit discrimination in the sale, rental or financing of dwellings.

E. HUD requirements for size of logo in advertisements

[the ad is:]	[size of logotype in inches must be]
$\frac{1}{2}$ page or larger	[2 x 2]
$\frac{1}{8}$ page up to $\frac{1}{2}$ page	[1 x 1]
4 column inches to $\frac{1}{8}$ page	$[\frac{1}{2} \times \frac{1}{2}]$
less than 4 column inches	[do not use]

F. Posters

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or brokerage services. Fair housing posters shall be at least 11 inches by 14 inches and bear the information illustrated on the Fair Housing poster (page 14).

Federal Laws, Court Decisions, and Advertising

Copyrights and advertising

Since 1903, the United States Supreme Court’s ruling in *Bleistein v. Donald Lithographing Co.*, has held that advertisements may be original and artistic works, and can be afforded copyright protection.

In 1989 (*Community for Creative Non-Violence v. Reid*), the Court clarified a long-standing problem concerning the ownership in advertising of “work made for hire.” “Work for hire” means the creator of the ad gives up all ownership and rights in the ad. It indicated that this ownership question is only applicable to those persons

The Slogan:

**EQUAL HOUSING
OPPORTUNITY**

The Logo:



The Statement:

... “We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are not barriers to obtaining housing because of race, color, religion, sex, handicap, familial status or national origin.”

Fair Housing Poster

U.S. Department of Housing and Urban Development



We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

It is Illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

- In the sale or rental of housing or residential lots
- In the provision of real estate brokerage services
- In advertising the sale or rental of housing
- In the appraisal of housing
- In the financing of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination with the:

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

form HUD-928.1 (3-89)

whose relationship with the commissioning party is that of a formal, salaried employee or agent. Rights to these works belong to the commissioning party.

In general, the absence of a contract assigning such rights to a commissioning party allows the copyright to remain with the artist or independent contractor. To avoid disputes, specify ownership in the contract.

When copyrighted work is informational rather than creative, a wider scope has been allowed on the basis that the public is best served by the free dissemination of information (fair use doctrine).

Comparative advertising

Using parts or the whole of a competitor's firm or product offering in an advertisement is proper when one adheres to certain standards. Trademark infringement does not occur in an advertisement when an advertiser uses a competitor's trademark for comparative advertising, so long as the purpose is to inform the consuming public of the qualities of the advertiser's product.

The federal Lanham Act indicates that false advertising occurs when a trade name, trademark, or service mark is used and characterized in a way which is not representative or factual of the product or business. To determine deceptiveness in the use of comparative advertising, it is only necessary to show that the public was likely to be misled or confused, not that they were.

In addition to consumer false advertising, an individual or corporation may be defamed by comparative advertising which affects the prestige and standing of the firm or individual in the business community. Court cases in this realm revolve around the question of "public figure" issues.

Disclaimers

A disclaimer will *not* cure the overall impression of an advertisement which is misleading and contains deceptive material. Disclaimers are effective only where *used to explain rather than contradict* misleading words.

Truth-in-Lending Act (TLA)

TLA mandates requirements for any advertising of consumer credit for personal or household purposes. This includes the broad definition of advertising medium including billboards, fliers, window displays and all others found previously in this guide book section of "*What Constitutes Advertising.*" (page 2)

All parties who advertise consumer credit must adhere to the TLA regulations. This regulation section is known as *Regulation Z*.

In Regulation Z, there are “trigger words” which, when used in an advertisement or promotional material, mandate certain other included disclosures. In application, there are two types of recognized consumer credit, open-end and closed-end.

Open-end refers to revolving charge accounts and credit cards and will not be discussed in this guide. The second, closed-end, includes all other consumer credit and is highlighted in the following section.

Closed-end consumer credit

The advertising “*trigger terms*” are:

- the amount or percentage of any downpayment;
- the amount of any payment;
- the amount of any finance charge; or
- the number of payments or period of repayment.

When these trigger words/phrases are used in an advertisement, the text must also ***disclose*** and include the following:

- the amount or percentage of downpayment;
- the terms of repayment;
- the annual percentage rate (APR); and
- if the APR may be increased for any reason, this also must be disclosed.

Note: Multipage advertising where the same or different consumer credit disclosures are necessary may be set forth in a single table or schedule. A clear reference to the page for the disclosure information is required wherever a trigger term is used in advertising.

National advertising self-regulation

There is a self-regulatory provision in the advertising industry which evaluates and investigates media material used in national advertising. The ***National Advertising Division of the Council of Better Business Bureaus, Inc. (NAD)***, conducts initial negotiations on complaints or questions regarding the truth or accuracy of national advertisements.

NAD generally will not pursue complaints based on local advertising. Most often the original complaint is brought by a competitor in the industry.

Registered real estate schools

HAR Title 16, Subchapter 5 of Chapter 99 sets forth requirements for registering a real estate school with the Commission. Readers interested in this subject should refer to Section 53 for specific language (Application for Registration). A real estate school's registration application must include:

- a copy of the school catalogue or brochures, and
- a statement of the content of advertising and the media to be used.

A school is prohibited from soliciting students until it has been registered with the Commission, unless all their promotional material states "subject to completion of all registration requirements."

Any violation of the advertising rules may result in the Commission's revocation or suspension of the school registration.

Designated principal

HAR Section 16-99-58 indicates that each school must have a designated principal who, among other duties, is responsible for the advertising of the school.

Tuition and other charges

All tuition and other charges must be published in a school catalogue and no school may deviate from its published tuition rates and charges. All collected money will be refunded in full if the class does not start on the date published in the catalogue or in any other advertisement.

Advertisement content

Specific information is required in real estate school advertisements. When soliciting students, a school must indicate where the catalogue or brochure may be obtained. The school may also be held responsible for the acts and promises in such solicitations by its agents.

Prior to publication and dissemination, schools shall submit to the Commission for review ***ALL*** copies and proofs of advertising, brochures, and promotional materials covering its real estate course.

The Commission may also require that a school furnish proof of any of its advertising claims. If necessary, retractions may be ordered by the Commission. All retractions must be issued in the same type format (or larger) as the original claims.

Prohibitions

In advertising, schools may not provide to the public or students false, misleading, or deceptive information. For example:

- using a school name which is not registered with the Commission;
- guaranteeing or warranting that a student will pass the real estate exam by taking their course;
- guaranteeing employment or income to a student unless the school can and does so in writing;
- claiming to be “recommended,” “endorsed,” “approved,” or “accredited” by the Commission or endorsed by a business organization, until written evidence is filed and the school is registered with the Commission; and
- collecting fees for enrollment in a course or advertising a course before the school is registered with the Commission.

Registered Continuing Education Providers

HAR Title 16, Subchapter 9 of Chapter 99 provides the rules for providers of continuing education (CE) in real estate. As with the real estate school requirements, the Real Estate Commission also requires that copies of all proposed advertisements for CE be submitted with the application for registration as a continuing education provider.

In addition, there are other rules which apply to advertising that are described in the following sections.

Soliciting students

An announcement must be used, listing at the minimum:

- the name and address of the continuing education provider;
- sites where available; and
- a brief description of the course, the number of course hours, and if it can be used to satisfy CE requirements.

Provider Inspections

The Commission may inspect and require proof of any advertising claims and determine whether a retraction is warranted. If a retraction is required, the provider must publish the retraction in the same manner the original claims were advertised.

No advertisements may represent that a continuing education provider is registered with the Commission unless the provider has received written notification from the Commission.

Prohibitions

Besides all advertising being free of misrepresentations and fraud, the specific prohibitions set forth by the rules governing real estate schools are essentially the same for continuing education providers. For these specifics, please refer to *Prohibitions* in the “*Advertising requirements for registered real estate schools*” section of this guide. (page 17)

Uniform Land Sales Practice Act

HRS Chapter 484 includes, among other requirements, advertising guidelines for developers. A subdivision is defined as any land which is divided or proposed to be divided into two or more lots. Such advertising of subdivided land for sale or lease is referred to in the statute as being a part of the “common promotional plan.” Those who are required to or choose to file a completed registration application with the DCCA may be subject to having their advertising material and the promotional plan examined for false or misleading claims.

A statement that no such advertising material has been produced as of the date of the application is also acceptable. In this situation, the material would have to be submitted for examination before any promotion or advertisement was issued by the developer.

Public offering statement

The public offering statement describing the physical and material facts of the property must be given to each prospective purchaser. When the developer’s public offering statement is accepted by the DCCA’s director, the developer’s advertising may **NOT** represent that the director *approves or recommends* the property. In fact, **NO** portion of the report, except for the heading, may be underscored, italicized, or printed in larger, heavier or different color print (without the director’s agreement).

Advertisements or promotional materials which refer to the fact that the subdivision is registered with DCCA require the following accompanying statement:

“Registration does not mean approval or disapproval of the subdivision.”

Cease and desist

If the developer, directly through an agent or employee, knowingly engages “...in any false, deceptive, or misleading advertising” or promotional method, the Director of DCCA may issue a temporary cease and desist order.

Time Sharing Plans

Advertising rules for *Time Sharing Plans* are found in HRS Chapter 514E and HAR Title 16, Chapter 106 (Time Sharing). A time share plan is a program or plan where the use, occupancy, or possession of each time share unit circulates among various persons for less than a **60 day** period in any year. The definition includes both ownership and use plans.

Also included in this chapter are the *transient vacation rentals*. In a multiple use building, these rentals pertain to rentals over the course of one or more years in which the length of occupancy is less than **30 days**.

Prohibited advertising practices

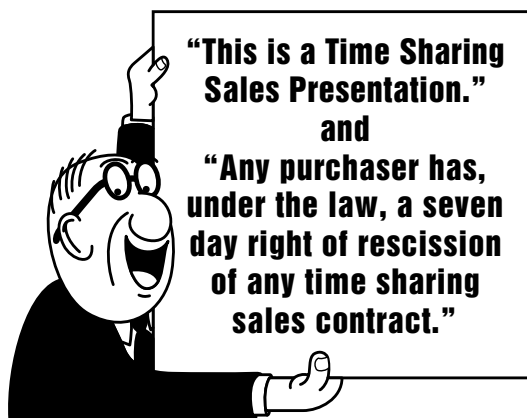
A sales agent, an acquisition agent, or a time share firm may not use any promotional device such as:

- entertainment,
- prizes,
- gifts,
- food/drink, or
- other types of inducements, without fully disclosing that the use of such a device is for the purpose of soliciting or attending a sale of time share units. This disclosure in writing or print, when offering a prize or gift, must be in a size equal to a minimum of 10-point bold type and contain the following *mandatory information*:

- full description and cash value of the device;
- all the terms and conditions attached to receiving the device;
- a disclosure that attendance is necessary at sales presentation; and
- full identification of the time share project being offered, type of ownership, price range, and any exchange privileges.

Deceptive trade practices

To not fully disclose that the advertised or promotional inducements are for the purpose of soliciting the sale of time share interests by agents or the developer is a deceptive trade practice. All printed and written material used in advertising or literature to promote time share must carry the boxed captions:



Both of these captions must be in capital letters of 24-point bold type (or type as large as the largest printing or writing elsewhere in the material).

The seven-day rescission caption *must be directly under* the disclosure caption in the material.

Misrepresentations

Misrepresentations occur in the advertising of literature promoting time share plans when:

- a. any purchaser's right to cancel or void a contract is not clearly stated;
- b. a service promised is not delivered;
- c. a location is deceptively described; or
- d. the conditions of an exchange are falsely presented.

Advertising and promotional material

HAR Title 16, Chapter 106, Subchapter 10 mandates that all advertisements and promotional material must be filed with the director of DCCA at least **15 days prior** to its use. This includes all radio, television or standard verbal sales presentation material.

Audiovisual material used in connection with a sales promotion shall be available, upon request of the director, for examination. The time share rules also

prohibit deceptive trade practices consistent with prohibitions under real estate advertising rules.

Condominium Property Regime

Advertising requirements are found in HRS Chapter 514A (Condominium Property Act) and HAR Title 16, Chapter 107, and affect any real estate project or plan whereby two or more apartments located within the condominium property regime are offered or proposed to be offered for sale.

Misleading statements and omissions

No person may knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation, or omit a material fact concerning any project offered for sale or lease.

Sales to nonowner-occupants

Offers for sale to nonowner-occupants are prohibited prior to issuance of an effective date by the Real Estate Commission for the public report concerning a condominium project.

An “offer for sale” means any attempt of whatever nature to encourage any person to acquire any legal or equitable interest in any condominium unit. It includes any advertisement, inducement, or solicitation including reservation agreements, options to purchase, sign posting, acquiring interested parties list (whether general or specific) or giving the selling agent’s name or address or telephone number.

When the Commission assigns an effective date to a public report, it may then be used for advertising purposes, however, the report must *only* be used in its entirety.

Copies of any advertisement and promotional literature for owner-occupants must be filed with the Commission *prior* to any issuance, circulation or publication. Literature must identify the offering is limited to owner-occupants only for materials distributed following the initial owner-occupant announcement and prior to the issuance of an effective date for the initial public report.

Filing of advertising material

HAR 16-107-23 “Filing of advertisement materials. Circulars, prospectus, brochures, pamphlets, leaflets, and all other advertising and promotional material on the condominium plan or project shall not be issued, circulated or published before a copy thereof shall have been previously filed with the commission. Such filing shall not be construed to mean an approval by the commission of the advertising and promotional material.”

“Filing of advertising materials” is applicable only to those advertising materials intended to be issued, circulated or published prior to the issuance of an effective date for an initial public report.

Thus, the developer is not required to file advertising materials which shall be issued, circulated or published after the issuance of an effective date for the initial public report.

The above opinion is an informal, nonbinding interpretation by the Commission. (3/24/94)

Sales to owner-occupants

An owner-occupant is any individual who has signed an affidavit of intent to be the owner of a designated residential apartment which serves as the individual’s principal residence, as defined by the state Department of Taxation for a period of not less than 365 consecutive days, and holds complete possessory control of the unit. An owner-occupant may not rent, lease or assign the unit during this time period.

HRS Section 514A-102 requires the publication of an announcement of the developer’s intention to sell a condominium project. Advertising must be published in the classified section of at least one newspaper published daily. For neighbor island projects, the announcement must *also* be published in the classified section of at least one newspaper which is published at least twice weekly in the county. The announcement must be published at least once in each of two consecutive weeks.

The reservation system for owner-occupant apartments may be set up as a chronological or lottery system by the developer. In either case, the publication announcement may be published no earlier than *sixty days* prior to the date the developer registers the project with the Commission. This publication must include specific information which includes:

- name, address and telephone number of developer or real estate broker;
- a statement that the apartments shall be offered for sale upon the issuance of an effective date by the Commission for the first public report and the estimated effective date;

- the location and total number of apartments including the number designated as residential, and at least 50% designated residential apartments identified by apartment number, as owner-occupant apartments;
- price range and whether being offered as fee simple or leasehold;
- unit size and intended use (if other than a residential use is designated by an owner-occupant);
- estimated offering date;
- a statement that for ten days after the issuance of an effective date of the public report the apartments will be initially offered only to prospective owner-occupants on the final reservation list who will use the units as their principal residences for a period of not less than 365 consecutive days;
- whether the final reservation list shall be determined by a chronological or lottery system (lottery system must provide date, time and location of lottery);
- a statement of availability and number of residential units in project that are “accessible” and “adaptable” for persons with disabilities;
- requirement of the signing of an affidavit and submission of an earnest money deposit; and
- a statement that no public report has been issued by the Commission.

Exemptions — HRS Section 514A-108 provides that condominium projects sold to family members, or where the developer builds or converts two houses on a single lot are exempt from the owner-occupant requirements.

Chronological reservations

When a chronological order method of the reservation system is being used, *...no developer, employee or agent of the developer, or any real estate licensee shall, either directly or through any another person, release any information or inform prospective owner-occupants about the publication announcement ...including the date it is to appear, until after the announcement is published.*

Prospective owner-occupants under the chronological reservation system will duly execute and submit Commission approved affidavits to file with the developer or developer’s real estate broker.

Lottery reservations

All prospective owner-occupants who have duly executed and submitted the Commission approved affidavit and filed with the developer or developer’s real estate broker as of the date of the first published announcement until 5 calendar days after the last published announcement will be able to participate in the lottery.

The developer must file a certified list of lottery participants with the Commission within 10 calendar days after the last publication of the announcement. The announcement must *include the date, time and location* of the public lottery and must be held **NOT** later than 15 calendar days after the last published announcement. Developers should notify the Commission as to the date of the last published announcement.

Right of first refusal for conversions

HRS Section 514A-105 gives a right of first refusal to purchase apartments in a building converted into a condominium to existing tenants who submit a Commission approved owner-occupant affidavit and earnest money deposit.

Penalties

Violators of the provisions of HRS Chapter 514A, or HAR Title 16, Chapter 107, may be fined up to \$10,000 or imprisoned for up to one year or both, and be subject to civil penalties not exceeding \$10,000 for any violation. Persons who violate or fail to comply with any owner-occupant provisions may also be subject to a penalty of **fifty** percent of the net proceeds received or to be received from the sale, lease, rental, assignment, or other transfer of the residential unit.

County Sign Regulations ---

It is very common for real estate licensees to use signs to advertise that a property is for sale or that a dwelling is available for inspection during an open house. Counties regulate the way that signs can be used in outdoor advertising. Violation of county ordinances could potentially result in disciplinary action against licensees on the basis of HRS Section 436B-19(12), which requires compliance with “any law.”

Each county has some form of sign ordinance. For example the City and County of Honolulu has different sign restrictions in twelve different districts. In addition, there are special standards for uses such as gasoline stations, theaters and shopping centers. The specific standard for real estate signs according to Revised Ordinances of Honolulu (ROH) Section 21-3.90-1 (Definitions and General Sign Standards), is “One sign per street frontage, not to exceed four square feet in residential districts or eight square feet in other districts.” There are also standards for advertising newly constructed subdivisions which allow one sign per street entrance not to exceed 32 square feet in size and which may be displayed for one year from date of erection of the sign.

Many licensees place directional signs on street corners or other locations off the property indicating where an open house is being held. According to ROH Section 21-3.90-2 (Prohibited Signs), it is unlawful to erect or maintain “any sign which advertises or publicizes an activity not conducted on the premises on which the sign is maintained....”

Each county’s rules are different. Also, because county ordinances change frequently, you should obtain a current copy of the county ordinance to determine which restrictions apply to your particular property.

